IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

First Appeal No. 660 of 2001
(Old No. 487 of 1990)

Madan Singh S/o Shiv Sigh,
R/o Nand Prayag, Tehsil and
District Chamoli ....Plaintiff/Appellant.

Versus

Notified Area, Nand Prayag,
through its President,
Notified Area, Nand Prayag,
Tehsil & District Chamoli ...Defendant/Respondent.

Sri Pankaj Purohit, learned counsel for the appellant.
Sri B.D. Upadhyaya, learned counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This appeal, U/S 96 of the C.P.C., has been preferred, against the judgment and decree dated 18-6-1990, passed by the District Judge Chamoli, in Civil Suit No. 16 of 1989, Madan Singh Vs. Notified Area Nandprayag, dismissing the suit of the plaintiff/appellant.

2. Brief facts giving rise to this appeal are that the plaintiff Madan Singh along with his two other brothers Jaman Singh and Fateh Singh has purchased three Muthis land of Khasra No. 352 at motor station Nandprayag and constructed a house in it. In front of this land there exists courtyard measuring 2 Muthis land of Khasra No. 345, which was long occupied by them. About this land proceeding U/S 4/5 U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 were also initiated against them and the Prescribed

Authority passed the order for the eviction of the plaintiff. Against the eviction order the plaintiff preferred appeal before the District Judge Chamoli, who vide judgment and order dated 21-5-1981 allowed the appeal and rejected the order of the eviction passed by the Prescribed Authority. In this way in the disputed premises the plaintiff along with his brothers is running the shop business. On11.1.89 the plaintiff was served with a bill for Rs.10,710/- from the defendant as tax for the period 9.1.1988 to 10-1-1989 for the use of the motor road for keeping the iron-rods. The plaintiff never used the land of Notified Area for keeping his goods, hence he sent reply dated 23-1-1989 to the defendant that he did not use the land of Notified Area for keeping his iron-rods for sale but the defendant illegally levied the tax. Hence the plaintiff filed declaratory suit before the District Judge, Chamoli declaring that the plaintiff did not come within the category of taxpayer and the notice issued in this regard be declared null and void.

3- The defendant Notified Area contested the suit by filing its W.S. denying the claim of the plaintiff. The defendant pleaded that the shop of the plaintiff is situated at Nand Prayag on main motor road running from Rishikesh to Badrinath. It was also alleged that the goods of the plaintiff is unloaded from the trucks on the road and it remain lying there for a long period and the goods are sold from the roadside also. It was also alleged that the demand notice is sent in accordance with the provisions of the relevant rules. The Notified Area Committee has full right to realize the tax from the plaintiff. It was also pleaded that the suit is not maintainable in Civil Court.

4- On the basis of pleadings of the parties, the trial court, framed the following issues in the case:-

1- Whether the plaintiff keeps his shop goods for sale on the motor Marg or on his own courtyard?.

2(A). If the land of motor Marg is used, then the area and the period from which the same is being used?.

2(B). Whether the amount of tax demanded, is due against the plaintiff?.

3- Whether the demand of tax is not made in accordance with any rule in this regard?.

4- Relief, if any, the plaintiff is entitled to get?.

5- Thereafter, parties adduced evidence in support of their case. The learned trial Judge, on perusing the evidence on record and hearing the learned counsel for the parties, dismissed the suit of the plaintiff, vide impugned judgment and decree dated 13-6-90.

6- Feeling aggrieved by the aforesaid judgment and decree the plaintiff has filed the appeal before the Allahabad High Court, which has been transferred to this court after creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- The evidence on the record shows that there is a notification issued by the State Government by which the government issued the notification pertaining to the Notified Area Nandprayag, Chamoli. This notification has been filed by the defendant-respondent before the court below and on the basis of this notification, it reveals that in view of sub-rule (9) of the said notification every shop-keeper will keep basket box by the side of the shop for

use as a dust-bin. The licence fee of all the shop-keepers was fixed as 15/- rupees per year. This notification was effective in Notified Area Nandprayag, Chamoli from the date of its enforcement, i.e. 29-8-1986.

9- Madan Singh, appellant was produced as a witness before the court below and he has deposed that he has his own shop at Nandprayag which was purchased by him from one Badri Prasad. He has also deposed that there had never been any demand of any tax from him. When the notice was issued to him by the Notified Area, Nandprayag then he replied that he has never kept any goods items of the shop on the side of the road or on the land belonging to Notified Area. He has further deposed that whatever the material is received in his shop, it is kept straightaway inside the shop after being unloaded from the trucks.

10- On the other hand, Ramesh Prasad Semwal, Secretary Notified Area Committee, Nandprayag, D.W.1, has deposed before the court below that he is the Sectary in the Notified Area Nandprayag w.e.f. 15.10.1985. He has further deposed that the shop of the plaintiff-appellant is on the main road and he runs the business of ready-made clothes, cement, iron-rods and other general merchandise. It has also been deposed by this witness that the iron-rods are kept outside the shop. The Notified Area sent an employee for recovery of the tax, but the plaintiff did not pay the same, hence the notice was issued to him. This witness has further deposed that whatever the tax is being levied against the plaintiff-appellant, that is, in accordance with the rules envisaged in the notification. This witness has further deposed that Madan Singh plaintiff-appellant is the sole trader of the iron-rods.

11- On the basis of the assessment of evidence on record, I come to the conclusion that there is no occasion with the Secretary, Notified Area Nandprayag, to depose falsely against the plaintiff-appellant. The Secretary has also produced the original register pertaining to the tax and the register reveals that the tax was levied against the plaintiff-appellant on the basis of the area occupied by the plaintiff-appellant.

12- The evidence of the defendant's witness, who is the Secretary of the Notified Area, clearly establishes that the plaintiff-appellant being the shop-keeper on the main road, keeps the iron-rods as well other items on the road side. Therefore, he is liable to pay the tax levied by the Notified Area.

13- Further, in view of Section 164 of the U.P. Municipalities Act, 1916, the jurisdiction of the Civil Court is barred, in case if the assessment is made within the frame-work of the provisions of the Act. Section 164 of the Municipalities Act, runs as follows:-

> **"*164. Bar to jurisdiction of civil and criminal courts in matters of taxation* -** *(1) No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed by questioned in any other manner or by any other authority than is provided in this Act.*
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> *(2) The order of the Appellate Authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final; provided that it shall be lawful for the Appellate Authority, upon application made within three months from the date of its original order on its own motion, to review an order passed by it in appeal by a further order; provided further that no order shall be reviewed by the Appellate Authority on its own motion beyond three months from its date."*

14- There is no material available on the record which may suggest that the assessment of the tax was not made within the frame-work of the provisions of the Act or it was made not inconformity with the mandatory provisions of the Act, but in complete disregard of the same.

15- In view of the aforesaid, I come to the conclusion that the tax levied by the Notified Area is well in accordance with the rules and the notification issued in this regard. Therefore, the Civil Court certainly did not have any jurisdiction to try the suit. The finding recorded by the court below in this regard is perfectly justified and does not require any interference by way of the appeal.

16- On the basis of the assessment of the evidence, I come to the conclusion that there is no perversity in the judgment passed by the court below. The conclusion drawn by the court below with regard to the bar of jurisdiction of civil court is absolutely justified.

17- The appeal lacks merit and is liable to be dismissed.

18- Accordingly the appeal is dismissed. The impugned judgment and decree passed by the trial court is hereby affirmed. The interim order, if any, shall stand vacated.

(B.C. Kandpal, J.)

Dated: November 1, 2006.
ISB